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TTAB

October 12, 2006

US Mail

United States Patent and Trademark Office
Trademark Trial and Appeal Board
PO Box 1451
Alexandria, VA 22313-1451
Attn: Cheryl S. Goodman

Re: Opposition No. 91167219
Serial # 78447127

Megazooka Trademark Published 6/14/05

Cheryl S. Goodman, Interlocutory Attorney,

Dear Ms. Goodman,

In addition to a copy of my first letter regarding this matter I am further responding to your communication dated October 4, 2006.

I am sorry if my first response was inadequate by your legal standards. However, I do believe it addressed most, if not all, of the statements made by Howard C. Miskin in his opposition with regard to the Trademark, Megazooka. Moreover, the last time I checked this was still the United States of America and I would like to believe that truth, honesty and, hopefully, simple justice would prevail over technical procedural formats. I find your October 4 notice to be especially disturbing in view of Miskin's blatant dishonesty, his own procedural flaws, his apparent disregard for the law and his constant and continued violations of conduct, obligations and duties as a Registered Patent Attorney. **Furthermore, you state that I did not provide a copy of my response to Miskin. I would point out that Miskin has similarly never provided me with copy of anything as well. Oddly, your office appears quite willing to render a decision of default even though letters/documents are never received by me from your office and/or are addressed improperly to me by your office.** However, I do appreciate at least being allowed to respond at this time.

In view of the fact that this issue is but just one subject of many which are part of major Federal litigation already initiated by Creative against CYI and its principles [(04-CV04696) – something of which, I might add, you and your office have been notified of numerous times] I do find your position regarding the trademark, its filing and rightful ownership confusing to say the least.



10-18-2006

Howard C. Miskin is quite probably one of the most repugnant, unscrupulous, dishonest and corrupt attorneys I have ever encountered. And, I can assure you that at the conclusion of the ongoing litigation I will do everything possible to see that he is disbarred from the practice of law. He has, in complete contravention to all written Agreements – Agreements which HE drafted - and/or is a party/beneficiary of - illegally filed patents and trademarks for his “client(s)”, [two of whom are convicted felons (Steve Zulloff & Barry Benjamin) - Securities Fraud, Income Tax Evasion]. In addition, is the fact that Miskin directly benefits from the sale and use of the properties and their trademarks and that this is but one of the reasons he has consistently and deliberately lied, misused and mislead your office. Furthermore, Miskin’s illegal conduct and actions with regard to patents and trademarks appears to be not limited to this case. His actions, I believe, are also in violation of Federal Law. As such, I would encourage your office to open a formal investigation into Miskin’s said actions and conduct with respect to not only this case but others as well. There is additional and ongoing litigation unrelated to us involving similar and like matters.

With regard to Miskin’s Notice of Opposition filed 7/7/04 for the Mark, Megazooka, Serial Number 78/447/127 I will respond item by item in numerical order:

1. False – Megazooka trade name and product as well as the Airzooka trade name and product in addition to all related products were conceived, created and invented by Brian Jordan in association with Creative Group Marketing and Gary Ahlert. All rights thereto belong to and are owned by Brian Jordan, Creative Group Marketing and Gary Ahlert including the Web Sites, Airzooka.Com & Airzooka. Net.

Moreover, Howard C. Miskin, as counsel, **represented Brian Jordan, the inventor and owner of the Airzooka and Megazooka products.** He did so in conjunction with my assistance as agent for Jordan and for the preparation of a patent filing for the Airzooka product. Furthermore, he also did so by including his other client, Steve Zulloff, of CYI on the patent application. He then filed the patent without Jordan’s approval or knowledge. Now, Miskin, in a complete conflict of interest and in violation of every code of ethics and standards I know of, represents Zulloff in opposition to Jordan, Creative and Ahlert in an attempt to steal the product and its rights. Additionally, Miskin, not only represents Zulloff, CYI and Benjamin in this matter, he also, as stated above, receives percentages of all sales for the Airzooka and Megazooka products.

Perhaps the US Patent and Trademark Office might want to investigate this slight conflict of interest and violation of Federal Law as well.

2. False and a lie
3. False and a lie
4. False and a lie

5. False – CYI and Miskin were notified of the name and product Megazooka well in advance of any filing. Further, Miskin and CYI were denied any license rights to the name and product.
6. False
7. False
8. False
9. False
10. False

I hereby certify that a true and complete copy of the foregoing Response to Notice of Opposition # 91167219 has been served on Howard C. Miskin by mailing said copy on October 12, 2006, via first class mail, postage prepaid, to Howard C. Miskin, Stoll, Miskin & Badie, 350 Fifth Avenue, Suite 4710, New York, NY 10118.



Gary Ahlert

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: October 31, 2005

Opposition No 91167219
Serial No. 78447127

GARY ALHERT
400 MAIN ST STE 210
STAMFORD, CT 06901-3004

CYI, Inc.

v.

Alhert, Gary

Howard C. Miskin
Stoll, Miskin & Badie
The Empire State Building 350 Fifth Avenue, Suite 4710
New York, NY 10118

Torri Rodgers, Legal Assistant

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the

Trademark Trial and Appeal Board Manual of Procedure (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: November 20, 2005

Discovery period to close: May 19, 2006

30-day testimony period for party
in position of plaintiff to close: August 17, 2006

30-day testimony period for party
in position of defendant to close: October 16, 2006

15-day rebuttal testimony period
for plaintiff to close: November 30, 2006

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
CYI, INC.

Opposer,

v.

GARY AHLERT,

Applicant.
-----X

Serial No. 78/447,127

Filed: 7/7/04

Mark: MEGAZOOKA

Published: 6/14/05

NOTICE OF OPPOSITION

CYI, Inc. ("CYI" or "Opposer") is a corporation organized and existing under the laws of the State of California with its principal business place at 9314 Eton Avenue, Chatsworth, California 91311. Upon information and belief, Gary Ahlert ("Ahlert" or "Applicant") is an individual with an office at 400 Main Street, Suite 210, Stamford, Connecticut 06901. Opposer believes that it will be damaged by registration of the mark shown in Application Serial No. 78/447,127 for the mark MEGAZOOKA filed by Applicant, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer adopted and has continuously used the trademark MEGAZOOKA for a line of toys, namely a larger version of a plastic toy gun marketed under the term "AIRZOOKA," which shoots a ball of air when a rubber diaphragm is pulled back ("Opposer's Goods").

2. In connection with the sale and offer for sale of Opposer's Goods, CYI and its sister company, HPI Hong Kong Ltd. ("HPI") has adopted the MEGAZOOKA mark and has continually used such mark in connection with Opposer's Goods since at least as early as April 2004. In addition CYI is the owner of the domain name,

www.megazooka.com, which it acquired on April 16, 2004.

3. Opposer's Goods sold under the MEGAZOOKA mark have been extensively and continuously marketed and promoted throughout the United States and the world. As a result of the quality of Opposer's Goods and the promotion thereof under the MEGAZOOKA mark, the goods have met with great commercial success.

4. CYI and HPI adopted and used the MEGAZOOKA mark prior to the Applicant's application filing date.

5. Applicant seeks to register the mark MEGAZOOKA for "plastic air toy, that shoots a ball of air" in international class 28 ("Applicant's Goods"). Applicant bases its application on intent to use the subject mark on goods identified. Said application was filed on July 14, 2005.

6. Opposer believes that it will be damaged by registration of Serial No. 78/447,127 for the mark MEGAZOOKA and hereby opposes the same under §2(d) of the Lanham Act. Applicant's MEGAZOOKA mark is identical to CYI's MEGAZOOKA mark. Further, Applicant engages (or intends to engage) in providing goods to the public that are identical to those that Opposer is currently providing, i.e. toy air guns. In view of these similarities Applicant's use and registration of MEGAZOOKA for Applicant's Goods is likely to cause confusion, mistake, or to deceive consumers as to the rightful owner of the mark and the ultimate source and controller of the goods thereunder in violation of 15 U.S.C. §1052(d).

7. Applicant is not entitled to registration of the MEGAZOOKA mark because it is not the rightful owner thereof, as Opposer has priority of use.

8. Opposer will be damaged by issuance of registration to Applicant in that

Opposer will thereby be denied its rightful ownership of the MEGAZOOKA mark, as Opposer has priority of use, and the public will be confused as to the ultimate source of the goods. In view of the foregoing, Opposer will be damaged by the registration of Applicant's claimed mark within the meaning of 15 U.S.C. §1063.

9. Applicant, through his intent to use in commerce the mark MEGAZOOKA will cause dilution of the distinctive quality of the MEGAZOOKA mark and thereby infringe upon Opposer's right in violation of 15 U.S.C. §1125(c)(1).

10. Applicant's proposed adoption of the mark MEGAZOOKA will necessarily be with full knowledge of Opposer's rights in the MEGAZOOKA mark, and with the willful intention to trade on Opposer's reputation as embodied in this mark, or to cause dilution of this mark. Thus, Applicant has willfully violated Opposer's rights under 15 U.S.C. §1125(c)(2).

WHEREFORE, CYI prays that this opposition be sustained and that registration be denied to Applicant on its Application serial No. 78/447,127.

In accordance with 37 C.F.R. § 2.101 this Notice of Opposition is being submitted in triplicate. A filing fee for the Notice of Opposition in the amount of \$300 is enclosed herewith. Any additional fees should be charged to Deposit Account No. 13-3731.

Dated: October 6, 2005
New York, New York

Respectfully submitted,

Howard C. Miskin

Howard C. Miskin
Gloria Tsui-Yip
Iwona A. Stasiewicz
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October 6, 2005

Denise M. DelGizzi
Paralegal Specialist
US Patent and Trademark Office Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Ms. DelGizzi:

Re: Judgement by default Opposition No. 91165615; OMS Investment, Inc V. Gavini Vinaya

I request that judgment by default not be entered in the case No. 91165615 on my behalf. The reason for such request is that when the original notice of opposition was sent to me, it was delivered to a wrong office and got to my office very late in August. I was away on a long vacation to China and returned on September 17th. I received your letter dated September 26th, 2005. I need to consult my Attorney in this matter.

I request you to grant me an extension, so that I would be able to prepare for a response.

Thank you very much

Yours truly,


Vinaya K. Gavini M.D.

10-11-2005

U.S. Patent & TMO/TM Mail Rpt. 01/034

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: October 4, 2006

Opposition No. 91167219

CYI, Inc.

v.

Ahlert, Gary

Cheryl S. Goodman, Interlocutory Attorney:

On November 15, 2005, applicant filed what appeared to be an answer to the notice of opposition. This paper was not served on opposer as required by Trademark Rule 2.119. Thereafter, on May 27, 2006, the Board issued an order advising applicant that its answer to the notice of opposition was informal as it did not comply with the requirements of Fed. R. Civ. P. 8(b). The Board allowed applicant time to file a proper answer.

However, applicant never filed a proper answer, and on August 30, 2006, the Board issued a notice of default for failure of applicant to file a proper answer. The Board allowed applicant time to show cause why default judgment should not be entered. On September 8, 2006, applicant filed its response to the notice of default, which the Board

notes, was not served on opposer as required by Trademark Rule 2.119.¹

In support of its motion to set aside default, applicant advises that it never received a copy of the Board's order dated May 27, 2006.²

Inasmuch as applicant never received the Board's order dated May 27, 2006, notice of default is set aside.

Applicant is allowed until **THIRTY DAYS** from the mailing date of this order to provide a proper answer as set forth in the Board's order dated May 27, 2006 which accompanies this order.³

As noted above, applicant's communications to the Board have not been in compliance with Trademark Rule 2.119. Applicant is advised that pursuant to Trademark Rules 2.119(a) and (b), every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding, including its answer to the notice of opposition, must be accompanied by a

¹ To expedite matters, the Board is providing a copy of this communication to opposer. Applicant is advised that strict compliance with Trademark Rule 2.119, as further explained in this order, is required with all filings with the Board.

² Applicant has also confirmed his address as well as the correct spelling of his name.

³ Copies of the Board's orders and all papers filed in this proceeding are available electronically at <http://ttabvue.uspto.gov/ttabvue>.

signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.⁴

As also noted in the Board's order dated May 27, 2006, which accompanies this order, applicant is proceeding pro se. While Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney, who is familiar with such matters.

If applicant does not retain counsel, he will be expected to familiarize himself with the rules governing this proceeding and to comply with all applicable rules and Board practices during the prosecution of this case. Applicant is advised that no special treatment is afforded parties that are proceeding pro se and strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

For applicant's information, the Trademark Rules of Practice, other federal regulations governing practice

⁴ The suggested format for a certificate of service is as follows:
I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and address of opposing counsel or party).

before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this opposition proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR), and the CFR and the Federal Rules of Civil Procedure are likely to be found in most law libraries, and may be available at some public libraries. Finally, the Board's manual of procedure will be helpful and may be accessed at <http://www.uspto.gov> by making the connection from that main page to TTAB materials.

Discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE:	December 3, 2006
30-day testimony period for party in position of plaintiff to close:	March 3, 2007
30-day testimony period for party in position of defendant to close:	May 2, 2007
15-day rebuttal testimony period for party in position of plaintiff to close:	June 16, 2007

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.⁵

⁵ As previously noted in the Board's order dated May 27, 2006, applicant has advised that the parties are currently involved in civil litigation in the Southern District of New York (04-CV-04696). The parties should provide a copy of the civil complaint

to the Board so that the Board can determine if the civil action will have a bearing on the proceeding.